

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**LPA-1107-2012 (O&M) in
CWP-11129-2006
Date of Decision:10.02.2020**

State of Haryana and others

...Appellants

Versus

Satya Narayan and others

...Respondent(s)

**LPA-1026-2012 (O&M) in
CWP-2116-2007**

State of Haryana and others

...Appellants

Versus

Rohtash and others

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Ms. Shruti Jain Goyal, DAG, Haryana
for the appellants (in both cases).

Ms.Alka Chatrath, Advocate and
Ms. Daljit Kaur, Advocate for the respondents
(in LPA-1107-2012).

Mr.D.S.Patwalia, Senior Advocate assisted by
Mr. A.S.Chadha, Advocate for the caveators/respondents
(in LPA-1026-2012).

SANT PARKASH, J.

This order shall dispose of aforementioned two intra court
appeals preferred under clause X of the Letters Patent, as issue which needs

consideration is common. For facility of reference, facts are being culled out from LPA No.1107 of 2012.

The present intra court appeal is directed against the order dated 15.02.2012 passed by the learned Single Judge of this Court, whereby order dated 09.05.2006 (P-11 in writ petition) terminating the services of the writ petitioners was set aside without granting financial benefit.

The facts, which are necessary for disposal of these appeals, are that Haryana State Industrial Security Force Act, 2003 (for short 'the Act') was passed by the Haryana Assembly in the year 2003. However, the Act was never enforced by the Government as required under Section 3(1) of the Act. Thereafter many Battalions of the said Force were sanctioned by the Government. Advertisements for filling up the posts of Constables for the said Force were issued vide advertisements dated 05.02.2004, 23.07.2004 and 24.07.2004. The appointments to the said posts were challenged before this Court by way of CWP No.248 of 2006. The Division Bench of this Court, while dismissing the writ petition vide judgment dated 09.01.2016, observed that since the Act under reference was never enforced, the very appointments of the petitioners were not in consonance with law. That apart, the appointments to the posts of Sub Inspectors were also challenged before this Court in number of writ petitions including CWP No.17202 of 2005. The learned Single Judge, dismissed the same while placing reliance on the aforesaid Division Bench judgment dated 09.01.2006.

In the present case, an advertisement for making recruitment against 84 posts of Constables/ Wireless Operators (Male and Female) in Telecommunication Wing of the Haryana Police were issued on 25.07.2004 vide Annexure P-1. In pursuant thereto, the candidates including the

respondents/writ petitioners submitted their application forms. After going through the entire selection process including the medical, physical, written test and interview, all the writ petitioners-respondents were declared successful candidates and they were given appointments and sent for necessary training. After completion of their training, they joined their duties accordingly. Unfortunately, the said Force was abandoned after some time and services of all the writ petitioners were terminated vide order dated 06.07.2005 (P-5 at page 55 of the paper-book) on the ground that the Act has been repealed vide Haryana State Industrial Security Force Act, 2005. The said order of termination dated 06.07.2005 (P-5) was challenged before this Court by way of CWP No.11021 of 2005. The said writ petition was disposed of by giving liberty to the State to pass fresh orders after hearing the writ petitioners. After doing the needful, services of writ-petitioners/respondents were again terminated vide order dated 09.05.2006 (P-9).

Aggrieved therefrom, the writ petitioners filed two writ petitions bearing CWP Nos. 11129 of 2006 and CWP No.2116 of 2007.

The learned Single Judge allowed the said writ petitions vide judgment dated 15.02.2012. While allowing the same, the learned Single Judge noticed that a similar controversy had arisen before this Court in a group of appeals including **LPA No.96 of 2009 (Mohan Lal and others Vs State of Haryana and others)**, wherein services of the persons appointed on the posts of Sub-Inspectors were also terminated on the ground that the Act was repealed and Haryana State Industrial Security Force Battalions were disbanded w.e.f. 2005. What weighed on the mind of the learned Single Judge was that once the posts have been advertised for appointment

to the Haryana Police by following the procedure of written test and interview and vacancies were available, then, persons who have been selected and appointed after undergoing training, could not be thrown out on the pretext that HSISF has been disbanded. The learned Single Judge further observed that it was not the case of the State that the selection process was fraudulent or that the writ petitioners/respondents were not eligible or were not qualified. The learned Single Judge allowed the writ petitions in the following terms:-

“As a sequel to the above discussion, these petitions are allowed. The impugned orders terminating the service of the petitioner(s) are hereby set aside. The petitioner(s) undertook not to insist on financial benefits but only would be entitled to continuity of service for all intents and purposes. The needful shall be done within a period of two months from the date of receipt of a copy of this order.”

Hence the present appeals.

Learned State counsel has vehemently argued that the learned Single Judge committed a grave error and outrightly ignoring the material placed on record whereby all the writ petitioners/respondents were informed time and again at every stage of selection process that the selection was being made for the HSISF and not for the Haryana Police. Referring to various documents, learned counsel for the State has submitted that the learned Single Judge erroneously ignored these documents and wrongly placed reliance upon the judgment passed in **Mohan Lal's** case (supra).

It is argued on behalf of the writ petitioners/respondents that since the advertisement was for the posts of Constable/Wireless Operators in Haryana Police, it does not lie in the mouth of the appellants-State to agitate or plead that the appointments were made for HSISF. In order to

fortify their arguments, they have taken the Court to the advertisement (P-1), wherein it is so mentioned. It is next argued by the learned counsel for the writ petitioners-respondents that the judgment passed in **Mohan Lal's** case (supra) is fully applicable to the facts and circumstances of the present case, wherein the termination order qua the Sub-Inspectors allegedly recruited for the HSISF was set aside.

We have heard the learned counsel for the parties and perused the record of the case minutely.

The factual matrix of this case is almost admitted. Advertisements for filling up of 84 posts of Constable/Wireless Operators (Male and Female) were published in the newspapers `Dainik Jagran & Times of India for Telecommunication Wing of the Haryana Police. Admittedly, there is no mention in the said advertisement (P-1) that the appointments were being made for HSISF. However, immediately after coming into notice the aforesaid bonafide mistake, directions were issued to the Superintendent of Police-cum-Chairman Selection Board, Panchkula vide letter dated 09.08.2004 (R-2) to clarify that recruitment of Constables/Wireless Operators was being made for HSISF only and not for Telecommunication Wing of Haryana Police. Further, in pursuance of the said letter, the Superintendent of Police-cum-Chairman, Selection Board had displayed above letter at the notice board in Police Line Panchkula as well as in the premises of office of Superintendent of Police, Panchkula for the information of all the candidates including the writ petitioners/respondents that the recruitment in question was for HSISF and not for the Telecommunication Wing of Haryana Police (R-4). Besides this, the Chairman, Selection Board had also announced the same at Tau Devi Lal

Stadium, Panchkula when all the candidates including the writ petitioners/respondents were present for physical test. This clarification was time and again brought to the notice of the candidates when they appeared for the next stage of examination, which is clearly evident from Annexures R-4 and R-5. Further, in the appointment letters, on the basis which, the writ petitioners/respondents were appointed, it was manifest that they were being appointed as Constables in HSISF, which is evident from appointment letter (R-6) issued to one of petitioners namely Satya Narayan Bhardwaj. Moreover as per Form of Agreement (R-8), which was entered into between one of the writ-petitioners/respondents (Satya Narayan Bhardwaj) and the State, he had agreed to appoint as Constable to serve in the HSISF.

From the aforesaid documents, an irresistible and unerring conclusion can be drawn that the appointments of the writ petitioners/respondents were made for being appointed to serve HSISF. It is further crystal clear that the petitioners themselves were also very much aware of the fact from the very beginning when the process was initiated that the recruitment was for the purpose of Constables/Wireless Operators in HSISF. They never raised any objection to the same during the whole process of recruitment in question.

At this stage, when the services of the writ petitioners/respondents have been terminated, they cannot be allowed to blow hot and cold in the same breath. On the one hand, they themselves accepted the appointment as Constables/Wireless Operators in the HSISF and on the other hand, they are denying this fact. Definitely, there was an inadvertent mistake in the advertisement (P-1), which was subsequently

clarified vide documents referred to above.

The submission of learned counsel for the writ petitioners/respondents for placing reliance upon the judgment passed in **Mohan Lal's** case (supra) is totally misconceived. The aforesaid judgment is distinguishable from the facts and circumstance of the present case. From the copy of the judgment in **Mohan Lal's** case (supra), which is available on the record of this file, it could not be gathered that at any stage of recruitment process the candidates for the posts of Sub-Inspector were informed either by any corrigendum or by any clarification as it has been done so in the instant case.

Taking into consideration the totality of the circumstances, we respectfully differ from the findings recorded by learned Single Judge and have no other option but to hold that the termination of the writ petitioners/respondents from the posts of Constables/Wireless Operators was in accordance with law.

The respondents were appointed as Technical Constables on 17/23.12.2004 and were discharged on 06/07.07.2005 on disbanding of HSISF. The respondents were undergoing basic recruit training at that time. They were taken back in service on 20/21.12.2012 after the learned Single Judge allowed the writ petition and no interim relief was granted to the appellants in the instant appeals. Thereafter, the respondents were allowed to complete the basic training of one year duration. On the date of passing of this judgment, the respondents had already rendered more than seven and half years' service. Another fact, as has been brought to our notice by Mr. Patwalia, which has weighed on our mind, is that all the respondents who have served in the appellant department for a considerable period of time

and have gained further promotions, have now become overage to apply afresh for any other post. Therefore, considering this factual position, we do not deem it appropriate to issue any direction for termination of the services of the respondents. However, since we have already accepted the instant appeals, the appellants cannot be saddled with the liability for the period before the reinstatement of the respondents in December 2012 and thus direct that the said period will be considered as *dies non* for all intents and purposes. Mr. Patwalia has also very fairly accepted that the reinstatement of the respondents shall be treated as a fresh appointment for all ensuing service benefits.

In view of the above directions, both the appeals are disposed of.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

10.02.2020
mks

Whether speaking/reasoned:	Yes / No
Whether Reportable:	Yes / No